

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:21-cv-00318-MR-WCM**

JOHNNIE R. SIMMONS, JR.,                          )  
  )  
  )  
Plaintiff,    )  
  )  
vs.    )  
  )  
WALMART INC.,                                        )  
  )  
Defendant.   )  
  )  
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  )

**O R D E R**

**THIS MATTER** is before the Court on the Defendant's Motion to Dismiss [Doc. 24]; the Magistrate Judge's Memorandum and Recommendation [Doc. 31] regarding the disposition that motion; and the Defendant's Objections to Memorandum and Recommendation of Magistrate Judge [Doc. 32].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the Defendant's motion and to submit a recommendation for its disposition. On August 5, 2022, the Magistrate Judge issued a Memorandum and Recommendation regarding the pending motion. [Doc. 31]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in

writing within fourteen (14) days of service. [Id.]. The Defendant filed Objections on August 19, 2022. [Doc. 32]. The Plaintiff filed a Reply to those Objections on September 1, 2022. [Doc. 34].

After a careful review of the Memorandum and Recommendation and the Defendant's Objections thereto, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the Defendant's motion to dismiss.

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's Objections [Doc. 32] are **OVERRULED**, and the Memorandum and Recommendation of the Magistrate Judge [Doc. 31] is **ACCEPTED**.

**IT IS FURTHER ORDERED** that the Defendant's Motion to Dismiss [Doc. 24] is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. In light of the Plaintiff's request and without objection by the Defendant, the Plaintiff's claims under 42 U.S.C. § 1981 and 42 U.S.C. § 1982 are **DISMISSED WITHOUT PREJUDICE**;
2. The Plaintiff's claims for defamation *per se* and punitive damages are **DISMISSED WITH PREJUDICE**; and

3. In all other respects, the Defendant's Motion to Dismiss [Doc. 24] is **DENIED**.

**IT IS SO ORDERED.**

Signed: September 6, 2022



Martin Reidinger  
Chief United States District Judge

